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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Parts 144, 147, 153, 154, 155, 156, and 158**

**[CMS-9937-F2]**

**RIN-0938-AS57**

#### **Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** This document corrects technical and typographical errors that appeared in the final rule published in the March 8, 2016 **Federal Register** (81 FR 12204 through 12352) entitled “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017.” The effective date for the rule was May 9, 2016.

**DATES:** Effective Date: This correcting document is effective [**Insert date of publication in the Federal Register**]

Applicability Date: The corrections indicated in this document are applicable beginning May 9, 2016.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 2016-04439 (81 FR 12204), the final rule entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017"

(2017 Payment Notice), there were technical errors that are identified and corrected in section IV, the Correction of Errors. These corrections are applicable as of May 9, 2016.

## **II. Summary of Errors**

### **A. Summary of Errors in the Preamble**

On page 12296, the phrase “paragraphs (c)(1)(ii) and (c)(2)(iii) of this paragraph” should include a reference to “(c)(3)(ii).” This correction clarifies how the provisions are at least as stringent as the requirements of paragraph (c) and aligns with the next paragraph that clarifies we do not believe that applying timeframes less stringent than those in the current §156.122(c) would benefit enrollees.

On pages 12310 and 12311 the word “consecutive” should have been attached to the description of the grace period for enrollees receiving advance payments of the premium tax credit (APTC), for the description to be consistent with the regulation text that was promulgated prior to the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Final Rule. This correction accurately reflects the length of the grace period for enrollees receiving APTC as being 3 consecutive months.

### **B. Summary of Errors in Regulation Text**

On page 12349, in §156.122(c)(4)(i)(D), we inadvertently omitted a cross-reference to paragraph (c)(3)(ii).

On page 12350, in §156.270(d) introductory text, we inadvertently omitted the word “consecutive” from the language describing the length of the grace period for enrollees receiving APTC.

## **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(3)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(3)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the notice. In addition, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects typographical and technical errors in the 2017 Payment Notice. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were adopted subject to notice and comment procedures in the 2017 Payment Notice. As a result, the corrections made through this correcting document are intended to ensure that the 2017 Payment Notice accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the

corrections in this document into the 2017 Payment Notice or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the 2017 Payment Notice accurately reflects our final policies as soon as possible following the date they take effect. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the 2017 Payment Notice accurately reflects these policies. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

#### **IV. Correction of Errors in the Preamble**

In FR Doc. 2016-04439 (81 FR 12204), published March 8, 2016, make the following corrections:

1. On page 12296, in the second column, in the first full paragraph, lines 18 and 19, the phrase “paragraphs (c)(1)(ii) and (c)(2)(iii) of this paragraph” is corrected to read “paragraphs (c)(1)(ii), (c)(2)(iii), and (c)(3)(ii) of this section”.
2. On page 12310,
  - a. In the third column, second full paragraph, line 3, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - b. In the third column, second full paragraph, line 29, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - c. In the third column, second full paragraph, line 38, the phrase “grace period of 3 months” is corrected to read “grace period of 3 consecutive months”.

3. On page 12311,
  - a. In the first column, in the first full paragraph, line 7, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - b. In the first column, in the first full paragraph, line 17, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - c. In the first column, in the first full paragraph, lines 24 through 25, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - d. In the second column, in the first full paragraph, line 8, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - e. In the second column, in the second full paragraph, line 14, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - f. In the second column, in the third full paragraph, line 13, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - g. In the second column, in the third full paragraph, line 22, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.
  - h. In the third column, in the first partial paragraph, line 12, the phrase “3-month grace period” is corrected to read “3 consecutive month grace period”.

**List of Subjects in 45 CFR Part 156**

Administrative practice and procedure, Advertising, American Indian/Alaska Natives, Conflict of interest, Consumer protection, Cost-sharing reductions, Essential Health Benefits, Prescription drug benefit, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Individuals with disabilities, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

Accordingly, the Department of Health and Human Services corrects 45 CFR part 156 by making the following correcting amendments:

**PART 156 – HEALTH INSURANCE ISSUER STANDARDS UNDER THE  
AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO  
EXCHANGES**

1. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321– 1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

**§156.122 [Amended]**

2. Section 156.122(c)(4)(i)(D) is amended by removing the phrase “paragraphs (c)(1)(ii) and (c)(2)(iii) of this section” and adding in its place the phrase “paragraphs (c)(1)(ii), (c)(2)(iii), and (c)(3)(ii) of this section”.

**§156.270 [Amended]**

3. Section 156.270 is amended by amending paragraph (d) to remove the term “3 months” and add in its place the phrase “3 consecutive months”.

**CMS-9937-F2**

Dated: **August 5, 2016.**

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**Madhura Valverde,**

Executive Secretary to the

Department,

Department of Health and Human

Services.

**BILLING CODE 4120-01-P**

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